

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of August, Two thousand and six.

PRESENT:

HON. DENNIS JACOBS,  
HON. ROBERT D. SACK,  
HON. BARRINGTON D. PARKER,  
*Circuit Judges.*

Jin Xiang Ke,

*Petitioner,*

-v.-

No. 05-3194-ag  
NAC

Alberto Gonzales,

*Respondent.*

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: Jesse M. Barrett, Assistant United States Attorney, South Bend, Indiana.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Jin Xiang Ke, through counsel, petitions for review of the May 2005 order affirming

1 Immigration Judge (“IJ”) Alan A. Vomacka’s decision denying his application for asylum,  
2 withholding of removal, and relief under the Convention Against Torture (“CAT”). We assume  
3 the parties’ familiarity with the underlying facts and procedural history in this case.

4 When the BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court  
5 reviews the decision of the IJ as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431  
6 F.3d 84, 85 (2d Cir. 2005); *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). This Court  
7 reviews the agency’s factual findings, including adverse credibility determinations, under the  
8 substantial evidence standard, treating them as “conclusive unless any reasonable adjudicator  
9 would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun*  
10 *Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

11 As a preliminary matter, the IJ reasonably declined to admit Ke’s proffered  
12 documentation as evidence. At an October 2002 hearing, the IJ clearly warned Ke that he needed  
13 to file any additional documents in his case thirty days prior to his final hearing in March 2003.  
14 The IJ specifically stated that if Ke filed documents “shortly before the hearing,” he would  
15 “probably [] not rely on them as evidence.” Nonetheless, at the final hearing, Ke’s attorney  
16 submitted additional documents to the IJ and attempted to request a continuance in order to  
17 prepare further documents for the court. The IJ considered Ke’s explanations for submitting the  
18 documents late, and provided ample reasoning for finding that Ke did not show that the late  
19 filing was justified, particularly when many of the documents were issued well before the  
20 deadline. The IJ’s decision to mark Ke’s documents for identification only was well within his  
21 authority to control the time limits for the filing of documents. 8 C.F.R. § 1003.31(c).

22 Because Ke fails to meaningfully challenge the IJ’s adverse credibility finding or the

1 denial of his CAT claim in his brief to the Court, any challenge to the IJ's resolution of these  
2 issues is deemed waived. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 546 n. 7 (2d Cir. 2005).

3 Even if Ke had adequately challenged the IJ's adverse credibility determination, substantial  
4 evidence supports the IJ's decision.

5 While the record reveals that the IJ at times engaged in speculation, the material,  
6 substantial implausibilities and inconsistencies identified in the record, in combination with more  
7 minor discrepancies, amount to substantial evidence to support the IJ's adverse credibility  
8 finding, and it is clear that the IJ would reach the same decision based only on these points. *See*  
9 *Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 162 (2d Cir. 2006); *see also Tu Lin v.*  
10 *Gonzales*, 446 F.3d 395, 402 (2d Cir. 2006) (finding that the cumulative effect of discrepancies  
11 that concern matters collateral or ancillary to a claim may nevertheless be deemed consequential  
12 by the fact-finder). Given that the only evidence of a threat to Ke's life or freedom depended  
13 upon his credibility, the adverse credibility determination in this case necessarily precludes  
14 success on Ke's claims for withholding of removal. *See Wu Biao Chen*, 344 F.3d at 275; *Paul v.*  
15 *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

16 For the foregoing reasons, the petition for review is DENIED. Having completed our  
17 review, any stay of removal that the Court previously granted in this petition is VACATED, and  
18 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending  
19 request for oral argument in this petition is DENIED in accordance with Federal Rule of  
20 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

21 FOR THE COURT:  
22 Roseann B. MacKechnie, Clerk  
23 By: \_\_\_\_\_